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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CR 20-371 JD
)	
Plaintiff,)	UNITED STATES' SENTENCING
)	MEMORANDUM
v.)	
)	
BHUPINDER BHANDARI,)	
)	
Defendant.)	
)	

I. INTRODUCTION

On June 6, 2022, Defendant Dr. Bhupinder Bhandari plead guilty to Count Seven of the Superseding Indictment in the above-captioned case, charging him with a felony violation of 42 U.S.C. § 1320a-7b(b), the Anti-Kickback Statute. This case originated from an investigation by the Federal Bureau of Investigation (FBI) into Bay Area doctors who referred patients to home health and hospice care in exchange for payments (kickbacks). As part of the investigation, the FBI launched an undercover operation, wherein an undercover FBI agent portrayed him/herself as someone representing investors intent on acquiring and expanding the patient population of a home health agency through

1 illegal kickbacks. During the undercover, another physician introduced Defendant to the UCE as a
2 physician willing to accept kickbacks in exchange for the referral of Medicare patients. The UCE then
3 met with Defendant in the summer of 2017 and ultimately solicited and received a \$1,000 cash payment
4 as a retainer for anticipated future referrals of Medicare patients to the home healthcare agency
5 purportedly represented by the UCE.

6 The U.S. Probation Officer has generated a thorough report, recommending a 3-year term of
7 probation and imposition of a \$5,000 fine. The guidelines range for Defendant, given his lack of
8 criminal history, is 0-6 months of custody.

9 For the reasons discussed below, the government respectfully joins in Probation's
10 recommendation. On the facts of this particular case, such a sentence is sufficient, but not greater than
11 necessary, to achieve the purposes set forth in 18 U.S.C. § 3553(a)(2), as described in more detail below.

12 **II. OFFENSE AND RELEVANT CONDUCT**

13 Defendant was a gastroenterologist practicing internal medicine in Hayward and Fremont; he
14 accepted a cash kickback during an undercover operation in exchange for referring patients to a certain
15 home health agency. *See generally* Bhandari Plea Agreement Dkt. No. 74 ("Plea Agmt."), ¶ 2 and
16 Bhandari Presentence Investigation Report, Dkt. No. 78 ("PSR"), ¶¶ 6-11, 49.

17 Several years ago, FBI agents began looking into kickbacks in the San Francisco Bay Area,
18 specifically in the fields of home health and home hospice. The investigation arose from concerns of
19 false billing and referrals without patient care in mind—that when kickbacks were paid for referrals,
20 health care providers would have a willingness to expose patients to unnecessary treatments that certain
21 home health agencies (HHAs) would have an inclination to bill for, but not necessarily following
22 through with providing the necessary services. An undercover operation was selected as the means of
23 investigating kickbacks in the industry. As part of the undercover operation, an undercover FBI agent
24 (undercover employee or UCE), portrayed him/herself as someone representing investors intent on
25 acquiring and expanding the patient population of another local HHA—HHA Alpha—through illegal
26 kickbacks. PSR ¶¶ 7-8.

27 In April 2017, another physician met with the UCE as part of the undercover operation and, once
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1 aware of the UCE's pitch, introduced Defendant Bhandari as a "hospital-based M.D." who would be
2 willing to accept kickbacks in exchange for patient referrals. The UCE sent Defendant a text message
3 saying he/she was a "business partner" of the other physician and wanted to meet with Defendant to
4 explain their "business model." *Id.* ¶ 8.

5 On June 22, 2017, Defendant met with the UCE who purportedly represented HHA Alpha. The
6 UCE offered to pay Defendant cash in exchange for patient referrals to the home health business he
7 purportedly represented. At the conclusion of the meeting, Defendant accepted \$1,000 cash from the
8 UCE as a good-faith payment in exchange for his future patient referrals. On June 26, 2017, Defendant
9 referred a Medicare beneficiary to the home health business purportedly represented by the UCE. Plea
10 Agreement ¶ 2; PSR ¶ 9.

11 On July 28, 2017, Defendant met with the UCE again and returned the \$1,000 cash paid by the
12 UCE during the previous meeting, stating "we want to be mindful of the law. The law is kind of saying
13 you can sell your services but you can't sell your patients." Defendant returned the cash because he was
14 aware that he was not supposed to take kickbacks for patients. Afterwards, however, Defendant
15 discussed the situation with the physician who introduced him to the UCE in the first instance and
16 Defendant again became comfortable with the arrangement. Plea Agreement ¶ 2; PSR ¶ 10.

17 On November 30, 2017, Defendant agreed to "reinitiate" the working relationship first proposed
18 by the UCE and was "happy to continue," at which point Defendant solicited and received a \$1,000 cash
19 payment from the UCE as a retainer for anticipated future referrals of Medicare patients to the HHA
20 Alpha. Plea Agreement ¶ 2; PSR ¶ 10. During the kickback arrangement, Defendant received, in total,
21 \$2,000 in cash from the UCE in exchange for agreeing to refer Medicare patients and as retainers for
22 Defendant's anticipated future referrals of patients to the home health business, although he retained
23 only \$1,000 given his return on July 28, 2017 of the initial \$1,000 received.

24 **III. SENTENCING GUIDELINES CALCULATIONS**

25 The government agrees with U.S. Probation's calculations as to the applicable Sentencing
26 Guidelines, which mirror the calculations in the plea agreement. *See* PSR at ¶¶ 16-24 and Plea Agmt.
27 ¶7.
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1 The government agrees that Defendant's Base Offense Level is 6, PSR ¶ 16. The government
2 further agrees that a two-level adjustment for abuse of a position of public or private trust applies given
3 Defendant's role as a medical doctor entrusted by his patients, medical facilities, and the state's medical
4 board to provide proper medical care to his patients based on needs and not personal motive for financial
5 profit. *Id.* ¶ 19; *see also* USSG § 3B1.3. Additionally, the government agrees that no Specific Offense
6 Characteristics apply given the particular facts of the charged conduct. *Id.* ¶ 17. The Adjusted Offense
7 Level (Subtotal) is 8. However, the government agrees that a two-level reduction for acceptance of
8 responsibility applies pursuant to USSG §§ 3E1.1(a). *Id.* ¶ 23. Thus, Defendant's Total Offense Level
9 is 6. *Id.* ¶ 24.

10 The government also agrees with Probation's finding that Defendant has 0 Criminal History
11 Points, placing him in Criminal History Category I. PSR ¶ 28. A Total Offense Level of 6 with a
12 Criminal History Category I yields an advisory sentencing range of 0-6 months.

13 **IV. SECTION 3553(a) FACTORS**

14 Defendant plead guilty pursuant to a Rule 11(c)(1)(B) plea agreement between the parties. The
15 government agreed to dismiss any open charges pending against the defendant in the captioned
16 Superseding Indictment at the time of sentencing.

17 While sentencing courts must consider each of the factors set forth in section 3553(a), the
18 following warrant further discussion in this case: the need for the sentence imposed to reflect the
19 seriousness of the offense, 18 U.S.C. § 3553(a)(2)(A), and to afford adequate deterrence to criminal
20 conduct, 18 U.S.C. § 3553(a)(2)(B), as well as the history and characteristics of the defendant, 18 U.S.C.
21 § 3553(a)(1).

22 Defendant knew better and should have done better. Defendant had the privilege of serving as a
23 medical doctor in the community. He accepted a kickback to refer Medicare patients to a particular
24 home health agency. He returned the kickback money thereafter, noting the illegality, but then
25 nonetheless agreed to accept another \$1000 as a retainer for future kickbacks. The conduct is serious,
26 and the felony conviction will serve as a powerful general and specific deterrent, and will likely have
27 serious collateral consequences on Defendant's ability to practice medicine in the future. Given
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1 Defendant's lack of criminal history, the particular facts of this case, and Defendant's acceptance of
2 responsibility by entering into the plea agreement, the government joins US Probation's
3 recommendation that the Court impose a three-year term of probation.

4 **V. CONCLUSION**

5 For the foregoing reasons, the United States respectfully requests that the Court impose a three-
6 year term of probation and order forfeiture of the \$1000 received as kickbacks during the undercover
7 operation (PSR ¶ 4, 69-70), and otherwise impose the terms and conditions recommended by Probation
8 in the PSR.

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10 DATED: November 28, 2022

Respectfully submitted,

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12 United States Attorney

13 /s/ Christoffer Lee
14 CHRISTOFFER LEE
15 Assistant United States Attorney
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